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TODD EVERTS, Legislative Environmental Analyst

STUDY SUBCOMMITTEE MINUTES

Monday, July 17, 2006
State Capitol, Room 137

Please Note: These are outlined minutes with audio recording. These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities.

COMMITTEE MEMBERS PRESENT

SEN. ROBERT STORY

REP. WALTER MCNUTT, CHAIR
REP. SUE DICKENSON, VICE CHAIR

MR. BUZZ MATTELIN

ABSENT

SEN. GREG LIND

STAFF PRESENT

KRISTA LEE EVANS, Research Analyst
LEANNE KURTZ, Research Analyst
DIANE MCDUFFIE, Secretary

ATTACHMENTS

[Agenda #1](#)
[Roll Call #2](#)
[Visitor's List #3](#)

COMMITTEE ACTION

- ▶ Moved to approve the Water Policy Report to the full EQC.
- ▶ Moved to adopt Department of Labor and Industry's Building Codes Bureau proposed changes to LC 2000.
- ▶ Moved to present LC 2000 to the full EQC.
- ▶ Moved to present LC 2001 to the full EQC.
- ▶ Moved to present LC 2002 to the full EQC.
- ▶ Moved to strike section 10 from LC 2003.
- ▶ Moved to present LC 2003 to the full EQC.
- ▶ Moved to present LC 2004 to the full EQC.
- ▶ Moved to present LC 2005 to the full EQC.
- ▶ Moved to adopt DNRC's recommended changes to LCHj33
- ▶ Moved to present LCHJ33 to the full EQC.
- ▶ Moved the study subcommittee adopt the Draft White Paper for HJR 33.

CALL TO ORDER AND ROLL CALL

Chairman McNutt called the meeting of the Environmental Quality Council Study Subcommittee to order at 1:00 p.m. on Monday, July 17, 2006. Secretary noted the roll.
([Attachment #2](#))

ADMINISTRATIVE MATTERS

MOTION: Senator Story moved the minutes of the May 18, 2006 meeting be approved with the correction noted above. **VOTE:** Motion carried unanimously.

(Tape 1; Side A)

CLARK FORK TASK FORCE UPDATE

Gerald Mueller, Project Coordinator, presented a power point presentation on the Clark Fork River Basin Task Force, July 17, 2006. ([Exhibit 1](#)) Mr. Mueller's presentation included history and background information on HB 397 which established the Clark Fork Task Force, purpose of the task force, development and key findings of the management plan, and work plan topics for 2005-2006.

In 2004 the task force prepared a water management plan and a number of the recommendations were adopted into the State Water Plan in 2005. In December 2005, Task Force members met with Confederated Salish Kootenai Tribes (CSKT) legal staff to discuss negotiations with the federal government regarding stored water in Hungry Horse Reservoir. In June 2006, DNRC Director Sexton and Tim Hall discussed Hungry Horse negotiations with three CSKT Council members and Tribal legal staff. DNRC was invited to address full Tribal Council at future meetings. On June 23, 2006 CSKT Vice-Chairwoman wrote to Director Sexton and the letter affirmed the position that the legal availability of water from the Hungry Horse

Project cannot be determined until the on-and off-Reservation reserved water rights of the Tribes have been quantified by adjudication or by compact between the Tribes, the United States and the State of Montana. The Tribes agreed to participate as observers in any meetings the DNRC conducts with the BOR concerning the potential for water contracts from Hungry Horse Reservoir. The Governor will write to the BOR requesting a meeting to explore the process by which the BOR will respond in the event the State requests a Hungry Horse contract. To address ground water data gaps and ground water policy issues, the Task Force will convene two conferences in the fall of 2006.

SURFACE WATER/GROUND WATER SUMMARY

Mary Sexton, Director, Department of Natural Resource and Conservation (DNRC) provided a brief update on the surface water/ground water work group and proposed statutory changes. The work group met May 2 and 31 and focused on tuning up the recommendations proposed to the ECQ Study Committee in May. Those were appropriations of ground water in closed basins and defining in statute the concept of augmentation and how it might be used to mitigate the impacts of new ground water appropriations on the watershed streams. At this time, many of the constituency groups are very supportive of moving forward with these recommendations. Several stake holders developed a series of proposals related to the water right permitting process and suggested some alternative processes. Four basic concepts come from regulator groups and construction and building groups. These had to do with increasing funding for water use permitting enforcement activities; improving the current permitting process; modifying the water right objection process; and creating a new permitting process. Another proposal relates to the decision making structure. Proponents of this approach will be come to the August work group meeting and provide a detailed proposal.

The work group plans to meet again August 17 and will be looking at the alternative permitting decision structure, speeding up the DNRC hearing schedule, reviewing the exemptions from permits for groundwater, alternative language for the exemption processes, and reporting from the constituency groups.

TOTAL MAXIMUM DAILY LOAD (TMDL) UPDATE

Krista Evans, Research Analyst, LSD provided a power point presentation on Montana TMDL Program Update prepared by Department of Environmental Quality (DEQ). ([Exhibit 2](#)) Ms. Evans explained that DEQ is currently on track for release of Montana's 2006 Integrated Report for public comment in September 2006 with the final submission to EPA anticipated in December 2006. The Settlement Agreement has been extended to December 2012 for completion of all the TMDL's and eight TMDL planning areas must be completed by December 2007. A Total of 498 stream segments were in need of reassessment. All streams on the reassessment list have been visited and sampled.

PUBLIC COMMENT

John Youngberg, Chairman of the Statewide TMDL Management Group testified that they are meeting the goals set forth by the Court. But because of recisions in the federal government, Environmental Protection Agency (EPA) is losing some of its funding and therefore their ability to provide financial and technical assistance to the state program is declining. There is a potential problem looming in the future with the program.

TRUST LAND STUDY

Krista Evans, LSD provided the written public comment that was received regarding trust land management study. ([Exhibit 3](#))

Chairman McNutt said that since Senator Hawks is requesting legislation, this committee would not incorporate his comments in the report.

Ms. Evans explained that the Morrill Act bill draft and the Account Combo bill draft are also part of the report. No comments were received on those bills.

(Tape 1; Side B)

Chairman McNutt expressed concern that the account combo bill draft (LC7777) does not specifically preclude the department from using funds from the sale of property to pay for the administration of the sale.

Monte Mason, DNRC explained that the language in 77-1-108, MCA is a formula for providing what the maximum amount that the legislature could appropriate. It's calculated on the total revenue pie. Section 77-1-109 provides the categories that money can be drawn from to fund trust land administration.

Senator Story asked if the department has the numbers available regarding how much money for administration and revenue consists of land sales.

Mr. Mason said in the past sales have been virtually nothing. Under Land Banking there has been some assets sold. He said the department does have that information.

Mr. Mattelin asked how the department has allocated the cost of land sale.

Mr. Mason said under the current statute, land sales are separately funded for activities for the Land Banking Program. The Land Banking Program has provisions in statute to use a portion of the proceeds from the nomination fees and the sale to fund that program.

Director Sexton, DNRC commented that the accounting part, determining the different funds and tracking them has been a complex process. The department came forward with the idea to collapse all the accounts into one to simplify the process.

Senator Story asked if a chart could be prepared by tomorrow showing a breakdown of the different classes in section 77-1-108.

Ms. Evans explained that today will be the last opportunity for this subcommittee to make a recommendation to the full EQC on whether or not to move forward with this bill draft.

Senator Story asked how do we determine what the appropriation will be measured against and where will the money be taken from first.

Mr. Mattelin requested a breakdown on land sales, easements and mineral royalties.

Chairman McNutt asked Barbara Smith, LFD if she could run a report showing the amount of revenue for land sales, leases, etc. going into the accounts.

Ms. Smith said she could run the revenue source currently going into the administration account.

Senator Story asked if under this bill will there be a paper trail that recreation user are paying for their use of state lands and the trusts are receiving some income from that benefit.

Ms. Evans responded that you would need to rely on the department's record keeping on how they track revenue sources to prove that.

Chairman McNutt provided a printout on the expenditures and transfers for the administration account prepared by Barbara Smith, LFD, generated from SABHRS data as of July 15, 2006. (**Exhibit 4**) The report shows a lump sum transfer but there is no breakdown of accounting by trust amount. Ms. Smith said the specific information requested by the committee is not accessible.

Mr. Mason said the department has the information on all the accounts on the revenues generated by trust and by category and how much was taken out to fund the trust land administration account (TAC).

(Tape 2; Side A)

Director Sexton said there are 3 different categories for recreation fees; general recreation, conservation license and special use recreation fees. Under the conservation license portion

90% goes directly for beneficiaries or can be accessed for administrative uses. The remaining 10% goes to recreational uses such as weed control, lease site cleanup. Under this bill, that portion would go away and the department would put together an appropriation request for weed control or lease site cleanup. The full amount that would be designated recreation use would go into the TAC account.

The Subcommittee declined to support LC 7777 as a committee bill.

WATER POLICY STUDY

Krista Evans, LSD presented the written public comment received regarding the water policy report. ([Exhibit 5](#)) The comments received were related to TMDL's, Water rights, Surface water/Ground water, domestic well exemption and the St. Mary Canal.

MOTION: Representative Dickenson moved to approve the Water Policy Report to the full EQC. **VOTE:** Motion passed.

HJR 10 FIRE STUDY

Leanne Kurtz, Research Analyst, LSD presented the public comments regarding the HJR Fire Study. ([Exhibit 6](#)) She explained that comments were received from the Department of Labor and Industry's Building Codes Bureau (BCB), Department of Natural Resources (DNRC), Thornton Liechty, Charles Umhey, and Debra Foley, who is President of the Montana Forest Owners Association (MFOA).

BCB's proposed changes re: LC2000, p33: 50-3-102(2) are: insert the following or similar language after "laws of this state" at the end of the sole sentence:

, so long as those rules do not conflict with building regulations adopted by the BCB of the department of Labor and Industry.

Senator Story asked if the BCB had a code that could be improved as far as making fires less likely to happen.

Ms. Kurtz hesitated to speak for BCB but she thinks their response to that would be if someone wants something more stringent they should do it through the BCB process and not have another agency adopt a rule that is more stringent.

Rep. Dickenson asked if the BCB codes are the final authority as far as regulations on preventing fires.

Ms. Kurtz said they are the final authority on building regulations.

Rep. Dickenson asked if local fire district building requirements would take precedence over the state building requirements.

Jim Kembel, representing Montana Association of Registered Land Surveyors, (MARLS) said that what they are working for across Montana is uniformity in dealing with construction standards. Subdivision regulations are for the division of land, not the construction of buildings. Ms. Kurtz explained that the section that this proposed change is in is the section prescribing the powers and duties of the State Fire Marshal's office.

Another change proposed by BCB re: LC2000 is: p.33; 50-3-102(4): insert the following or similar language after "portion of" and before "building" in the middle of the sole sentence:
an existing

The final change proposed by BCB re: LC2000 is: p.39; 50-61-102(3): insert the following or similar language after "chapter" at the end of first sentence in (3):
, and such adoptions by these entities are subject to the same limitations set forth in 50-3-103(2) MCA, and in administrative rules promulgated in accordance with that statute.

PUBLIC COMMENT

Doug McRae, Rancher, expressed concern regarding the language on civil penalty for setting or leaving fire and the liability to landowners.

(Tape 2; Side B)

Ms. Kurtz explained that the key phrase in that section is, "A person who sets or leaves a fire that spreads and damages or destroys property of any kind not belonging to the person".

Rep. Dickenson suggested adding language to determine when malice and negligence are able to be identified and an appeal process.

Senator Story asked if there is any change in the policy from current law in section 31, 50-63-102.

Ms. Kurtz said the change to "Civil penalty" is just clarifying that it is a civil penalty. The only substantive change in that section is the increase from \$10 to \$50.

Mark Phares, Attorney, DNRC said the change was related to making it a civil penalty not a criminal penalty.

MOTION: Senator Story moved to adopt BCB's proposed changes to LC 2000. **VOTE:** Motion passed.

MOTION: Representative Dickenson moved to present LC 2000 to the full EQC. **VOTE:** Motion passed.

Mr. Leichy's proposed change for LC 2001 is: p. 2: Section 2, *Permits to enter a closed area "MAY" be issued to individuals living in that area.* His comment is that residents living in a closed area "MUST" be allowed to protect or evacuate their property, pets, and livestock.

Senator Story asked if the permit should be given by the agency that closes the area.

Mr. Phares, DNRC said the process as it stands now, is that if there is a forest closure the Governor has to make that closure. A recognized agency could be DNRC, US Forest Service, or a local fire fighting force. More than likely in that closed area there would be some coordination because it has been closed.

Chairman McNutt, Senator Story and **Representative Dickenson** expressed concerns with changing "MAY" to "MUST".

MOTION: Mr. Mattelin moved to present LC 2001 to the full EQC with no changes. **VOTE:** Motion passed.

Mr. Phares, DNRC presented DNRC's proposed changes to Title 76 chapter 13, sections 105, 201, and 207.

Section 105(2) p.9; insert the following language after "provided in 76-13-204", and before "must be protected as"

or otherwise under contract for fire protection by a recognized agency

Section 105(3) p.9; add the following language after "Private and public land" and before "that is not within"

, whether classified as forest land or otherwise,

Delete the *department, a federal agency,* after "under the protection of" and before ", or a municipality"

Section 201(2) p.16 add the following language after "the landowner's agent" at the end of the sole sentence.

or in the event of a violation of 50-63-102 or 50-63-103.

Section 207(1) delete the following after "made on the owners of" and before "land, as specified in"

classified forest

Debra Foley, MFOA presented the following proposed changes to LC 2002:

Section 1(8), p. 3 add the following after "Development of" and before "fire protection"

locally approved

Chairman McNutt asked if the proposed change was brought before the working group and what was their reaction.

Ms. Kurtz said Ms. Foley's suggestions were emailed to the working group and they opted to let the subcommittee decide what to do.

Ms. Foley also wanted noted in the fire policy that federal lands are a significant factor affecting the management of public and private lands within the state. She also requested that the following statement be included in the Draft Report.

fires burning on public lands threaten private lands and public safety

Ms. Foley said the definition of "forest land" in Section 76-13-102(4) seems at odds with the definition of forest land used elsewhere in Montana law.

Ms. Foley also commented that the definition of Wildland-Urban Interface implies mostly artificial and totally inadequate parameters by which to define wildfire risk, assign cost, and levy assessment.

Senator Story asked who will have rule making authority under Section 16 and who the rules would apply to.

Ms. Kurtz said it would be DNRC. The intent of "must be in conformity with reasonable rules and standards" was an attempt to get DNRC to produce a document outlining what they consider to be adequate fire mitigation.

Senator Story expressed concern with the rule making authority and suggested proceeding with some caution.

(Tape 3; Side A)

MOTION: Representative Dickenson moved to present LC 2002 to the full EQC with no changes. **VOTE:** Motion passed.

Ms. Kurtz presented LC 2003 bill draft that makes changes to Title 7, chapter 33, which are the local government fire protection provisions. There were no public comments received on this bill draft. Ms. Kurtz explained that questions were raised at the last meeting regarding section 10, p.11. This section attempts to codify an Attorney General's (AG) opinion and Senator Story pointed out that the statutes that those reference and the statutes that the AG opinion were based on have changed significantly so Section 10 should be eliminated.

MOTION: Senator Story moved to strike Section 10 from the bill. **VOTE:** Motion passed.

Senator Story commented that although it may be problematic having "freeholders" be the people who determine districts he does not agree with changing "freeholders" to registered voters.

Chairman McNutt concurred with **Senator Story**.

Representative Dickenson said she feels that folks that don't own property but live in the area are paying rent and that encompasses all the expenses of that land, including property tax and they should have some say in forming a fire district.

Mr. Mattelin commented that this speaks to the problem of funding districts more than anything else. Fire protection is needed and if it is not funded with property taxes how will it be funded.

PUBLIC COMMENT

Harold Blattie, Montana Association of Counties, testified that the only reason the change is in the bill is that the HJR 10 work group was advised by Greg Petesch that "freeholder" is ill-defined and not an appropriate term that should be used. Whether or not registered voter is right is a policy decision that the legislature needs to make.

MOTION: Representative Dickenson moved to present LC 2003 to the full EQC with the single change of removing Section 10. **VOTE:** Motion passed. **Senator Story** voted no.

Ms. Kurtz presented LC 2004, the mutual aid bill. This bill would allow governing bodies to enter into mutual aid agreements with governing bodies of political subdivisions in other states. No public comments were received.

MOTION: Mr. Mattelin moved to present LC 2004 to the full EQC with no changes. **VOTE:** Motion passed.

Ms. Kurtz presented LC 2005. This bill would create a new section to be codified in Title 76, chapter 13 and provides that DNRC is exempt from MEPA when it is engaged in fire suppression activities pursuant to Title 76, chapter 13 parts 1 and 2. No public comments were received.

Motion: Representative Dickenson moved to present LC 2005 to the full EQC with no changes. **VOTE:** Motion passed.

MOTION: Representative Dickenson moved to adopt the HJR 10 report with the amended bill draft changes. **VOTE:** Motion passed.

HJ 33 CONTRACT TIMBER HARVEST

Krista Evans, LSD presented the public comment regarding the contract timer harvest study. ([Exhibit 7](#)) and the contract harvest bill draft LChj33. ([Exhibit 8](#)) Ms. Evans explained that comments were received from DNRC and Mr. Steve Thompson.

David Groeschl, Chief, Forest Management Bureau, DNRC said the department proposed changes that they felt would help clarify and address some of the issues that were raised by Mr. Thompson in his comment letter. One of the issues is regarding the volume that would be harvested under the forest health component of the bill. New Section 3, subsection (3)(b); p. 5 the department recommended a cap not to exceed 10% of the annual sustained yield. Another change was clarification for the definition for forest health concerns.

Mr. Mattelin commented that he though the subcommittee agreed to limit the amount harvested to a percentage of the sustainable yield.

Mr. Groeschl explained that the forest health component typically deals with non-merchantable material. Part of the contract may have merchantable material associated with it produced under contract harvesting as well as non-merchantable.

Mr. Mattelin asked how you measure non-merchantable.

Mr. Groeschl said depending on how it is disposed of, some material may be disposed of on a weight basis, scale basis, or a per piece basis.

Chairman McNutt asked for clarification of New Section 3, subsection (3)(b) on page 5.

Mr. Groeschl said section 3(a) deals with the limit for the use of contract harvesting within the sustained yield. Section 3(b) allows the department to produce an equivalent amount that would not exceed 10% of sustained yield.

Senator Story asked if annual sustained yield is defined in section 3.

Mr. Groeschl said there are 2 or 3 statutes that discuss sustained yield.

Senator Story asked if the language in 77-5-201(2) - the requirement that any sale "in excess of 100,000 board feet must be advertised in a paper of the county" - has any affect on the new program.

Mr. Groeschl said the department will need to look at the statute and see if the language may need to be amended.

(Tape 3; Side B)

MOTION: Senator Story moved to adopt DNRC's recommended changes. **VOTE:** Motion passed.

MOTION: Senator Story moved to present LCHJ33 to the full EQC. **VOTE:** Motion passed.

PUBLIC COMMENT

None

MOTION: Representative Dickenson moved the study subcommittee adopt the Draft White Paper for HJR 33. **VOTE:** Motion passed.

ADJOURN

Meeting adjourned 5:20 p.m.

Please Note: Our website address for this interim is :
http://www.leg.state.mt.us/css/lepo/2005_2006/default.asp